

Permit No: ND0026247
Effective Date: July 1, 2008
Expiration Date: June 30, 2013

AUTHORIZATION TO DISCHARGE UNDER THE
NORTH DAKOTA POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with Chapter 33-16-01 of the North Dakota Department of Health rules as promulgated under Chapter 61-28 (North Dakota Water Pollution Control Act) of the North Dakota Century Code,

the North Dakota State Water Commission

is authorized to discharge from the Devils Lake outlet project in Benson County, North Dakota

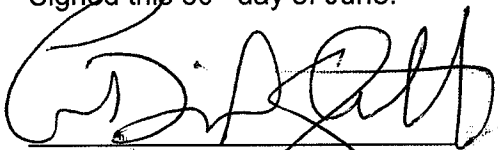
to the Sheyenne River

provided all the conditions of this permit are met.

This permit and the authorization to discharge shall expire at midnight,

June 30, 2013

Signed this 30th day of June.

A handwritten signature in black ink, appearing to read 'L. David Glatt', written over a horizontal line.

L. David Glatt, Chief
Environmental Health Section

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DEFINITIONS

PERMIT SPECIFIC DEFINITIONS

1. "Waters of the state" means any and all surface waters that are contained in or flow in or through the state of North Dakota as defined in NDCC 61-28-02. This definition includes all water courses, even if they are usually dry.
2. "Outfall 001" is synonymous with "discharge point", "insertion point", or "Devils Lake Outlet".

INDIVIDUAL PERMIT DEFINITIONS BP 2008.02.25

1. "Act" means the Clean Water Act.
2. "Acute toxic unit" ("TUa") is a measure of acute toxicity. TUa is the reciprocal of the effluent concentration that causes 50 percent of the organisms to die by the end on the acute exposure period (i.e., $100/\text{LC50}$).
3. "Average monthly discharge limitation" means the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.
4. "Average weekly discharge limitation" means the highest allowable average of "daily discharges" over a calendar week, calculated as the sum of all "daily discharges" measured during a calendar week divided by the number of "daily discharges" measured during that week.
5. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.
6. "Best management practices" (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage areas.
7. "Chronic toxic unit" ("TUc") is a measure of chronic toxicity. TUc is the reciprocal of the effluent concentration that causes no observable effect on the test organisms by the end of the chronic exposure period (i.e., $100/\text{NOEC}$).
8. "Composite" sample means a combination of at least 4 discrete sample aliquots, collected over periodic intervals from the same location, during the operating hours of a facility not to exceed a 24 hour period. The sample aliquots must be collected and stored in accordance with procedures prescribed in the most recent edition of Standard Methods for the Examination of Water and Wastewater.
9. "Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the day.
10. "Department" means the North Dakota Department of Health, Division of Water Quality.
11. "DMR" means discharge monitoring report.

12. "EPA" means the United States Environmental Protection Agency.
13. "Geometric mean" means the n^{th} root of a product of n factors, or the antilogarithm of the arithmetic mean of the logarithms of the individual sample values.
14. "Grab" for monitoring requirements, means a single "dip and take" sample collected at a representative point in the discharge stream.
15. "Inhibition concentration", ("IC"), is a point estimate of the toxicant concentration that causes a given percent reduction (p) in a non-quantal biological measurement (e.g., reproduction or growth) calculated from a continuous model (e.g., Interpolation Method).
16. "Instantaneous" for monitoring requirements, means a single reading, observation, or measurement. If more than one sample is taken during any calendar day, each result obtained shall be considered.
17. "LC50" means the concentration of toxicant (e.g., effluent) which is lethal to 50 percent of the organisms exposed in the time period prescribed by the test.
18. "Maximum daily discharge limitation" means the highest allowable "daily discharge."
19. "No observed effect concentration", ("NOEC"), is the highest concentration of toxicant (e.g., effluent) to which organisms are exposed in a chronic toxicity test [full life-cycle or partial life-cycle (short term) test], that causes no observable adverse effects on the test organisms (i.e., the highest concentration of effluent in which the values for the observed responses are not statistically significantly different from the controls).
20. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
21. "Total drain" means the total volume of effluent discharged.
22. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

OUTFALL DESCRIPTION

Outfall 001 – Active. Final Outfall. Devils Lake Outlet. This is an intermittent discharge consisting of surface water diverted from the West Bay of Devils Lake (Round Lake) to the Sheyenne River. The discharge from the diversion system enters the Sheyenne River in the SW ¼, SE ¼ Section 8, T151N, R68W.

The intake structure from the West Bay is located in the SW ¼, Section 35, T153N, R67W (also known as Round Lake). The intake structure must be fitted with a screen sufficient to protect the Devils Lake fishery from unnecessary and easily avoidable losses.

PERMIT SUBMITTALS SUMMARY

Coverage Point	Submittal	Frequency	First Submittal Date
001A	Discharge Monitoring Report	Monthly	August 31, 2008
001W	Discharge Monitoring Report	Quarterly	October 31, 2008
Application Renewal	NPDES Application Renewal	1/permit cycle	January 1, 2013

I. LIMITATIONS AND MONITORING REQUIREMENTS

A. Discharge Authorization

During the effective period of this permit, the permittee is authorized to discharge from the Devils Lake Outlet (West Bay), Outfall 001.

B. Effluent Limitations and Monitoring

During this permitting cycle, the permittee is required to complete the following:

1. An initial biological assessment of ecological condition of the Sheyenne River as outlined in item 10 of Part II.A ("Process Control Monitoring") of this permit was completed prior to startup. The Department may require an additional assessment during this permitting cycle which will be dependent on background river conditions.
2. Maintain and update as necessary the written adaptive management plan identifying procedures to ensure compliance with the permit requirements and applicable water quality standards as outlined in item 11 of Part II.A ("Process Control Monitoring") of this permit. Any changes to the adaptive management plan are not complete until approved by the Department of Health.

The discharge may operate only during the open-water season. There shall be no discharge when the Sheyenne River is ice covered. There shall be no discharge when the water elevation in Devils Lake is below 1445 ft (msl). Any discharge shall be limited and monitored by the permittee as specified below:

Table 1: Effluent Limitations and Monitoring Requirements for Outfall 001					
Parameter	Effluent Limitations			Monitoring Requirements	
	Avg. Monthly Limit	Avg. Weekly Limit	Daily Maximum Limit	Sample Frequency	Sample Type
Total Flow, mgal	*	*	Part I.B.4	Continuous	Recorder
Sulfate	*	*	Part I.B.5	5/week ^a	Grab
pH ^b	Shall remain between 6.0 to 9.0 s.u. ^b			1/week	Grab
Specific Conductance	*	*	Part I.B.7	Continuous	Recorder
Total Suspended Solids (TSS)	*	*	100 mg/l	1/week	Grab
Whole Effluent Toxicity (WET) ^c	Part I.C ^c			90 days	Grab
Part II.A ("Process Control Monitoring")					
Notes:					
*. This parameter is not limited. However, the Department may impose limitations based on sample history and to protect the receiving waters.					
a. The initial sampling frequency for sulfate shall be 5 times per week. After the outlet has operated for a period of one year, the sampling frequency shall be reevaluated and could be adjusted upon notification by the Department.					
b. The pH, an instantaneous limitation, shall be between 6.0 (s.u.) and 9.0 (s.u.).					
c. Testing shall be performed on the first discharge made each calendar year. Thereafter, tests shall be performed at least once every ninety (90) days in which there is a discharge.					

3. The Sheyenne River shall be monitored both upstream and downstream of the discharge from the outlet system ("insertion point") to determine compliance with the effluent limitations contained in this permit. The monitoring schedule for the stream stations shall be the same as that provided in table 1. The general location of the stream monitoring stations shall be as follows:
 - a. Upstream compliance monitoring shall be conducted at a point upstream of the outlet which is representative of river water quality prior to mixing with the effluent from the outlet system (Flora).
 - b. Downstream compliance monitoring shall be conducted at a point downstream of the outlet which is representative of river water quality after mixing with the effluent from the outlet system (Bremen).
4. The flow rate of Outfall 001 shall not exceed the most limiting of the following:
 - a. 100 cfs
 - b. The value in cfs determined by:

600cfs - Q_i Where: Q_i = flow in cfs at the upstream location
5. During periods of outlet operation, the 7-day sulfate concentration measured in samples from the downstream location (Bremen) shall not exceed the applicable criteria as dictated by ambient conditions in the Sheyenne River. The criteria shall be as follows:
 - a. 300 mg/l when the background concentration (C_{Bb}) is < 260 mg/l
 - b. 1.15 x C_{Bb} when the background concentration (C_{Bb}) is ≥ 260 mg/l and ≤ 390 mg/l
 - c. 450 mg/l when the background concentration (C_{Bb}) is > 390 mg/l

The background concentration shall be determined as follows:

$$C_{Bb} = \frac{Q_B C_B - Q_O C_O}{Q_B - Q_O}$$

Where: Q_B = river flow in cfs measured at Bremen
 C_B = river sulfate in mg/l measured at Bremen
 Q_O = discharge flow in cfs measured at Outlet
 C_O = discharge sulfate in mg/l measured at Outlet
 C_{Bb} = sulfate concentration in mg/l at Bremen without Outlet water

6. The pH at the downstream monitoring station should remain within the range 7.0 to 9.0. Natural processes may cause the pH to drift outside the stated range. In the event the measured downstream pH is outside of the range, the discharge may continue only if it can be determined that the pH excursion is not a result of the outlet discharge.
7. Continuous monitoring for specific conductance (conductivity) provides an immediate indication of the total dissolved solids (TDS) (salt) content of water at all times. The conductivity measurements are made with direct reading instruments which can provide real-time information for operating the outlet. The relationship between specific conductance and sulfate, as a component of dissolved solids, will need to be developed over time through the comparison of conductance and measured sulfate.

8. The permittee must conduct (or otherwise provide) a downstream monitoring program as outlined in Part II.A ("Process Control Monitoring"). The monitoring program will provide information needed to verify and refine model predictions used in designing an operating plan for the outlet. The information may also be used to adjust limitations on the discharge to maintain the desired water quality in the Sheyenne and Red Rivers.
9. River flow and water quality information collected by other agencies may be used to satisfy the compliance monitoring requirements. The collection and transportation of all samples must conform to EPA preservation techniques and holding times to satisfy Part III.B, ("Test Procedures"). The permittee is responsible for obtaining the data in a timely manner and including it on the discharge monitoring reports (DMR). Should an agency relied upon for compliance monitoring data discontinue monitoring at a location, it is the permittee's responsibility to make the arrangements to continue the required monitoring.
10. The Department may make certain adjustments to the effluent limitations and monitoring requirements, not qualifying as major modifications under 40 CFR 122.62, described in this part without providing a public notice and comment period. Increased or additional monitoring may be required if deemed necessary to further evaluate the impact of the discharge. The Department may specify additional discharge conditions or restrictions (including temporary limitations) to ensure established Water Quality Standards are maintained and/or to prevent the discharge from interfering with downstream uses.
11. The Department must be notified, in advance, of any facility expansions, additions, or modifications to increase outlet capacity. The increase in any effluent limitation, including the instream limit for sulfate, is considered a major permit modification. Major modifications require the issuance of a public notice inviting public comment.
12. The actual dates of discharge, frequency of analyses, total volume discharged, discharge flow rates, and number of exceedances shall also be included on the DMR. A separate attachment shall be included with the DMR which provide the sample dates and test results for sulfate, TDS, and daily flow rates for the compliance monitoring stations (discharge, upstream and downstream).

C. Whole Effluent Toxicity (WET) Requirements

1. Acute Toxicity Testing

WET tests shall be performed on the first discharge made each calendar year, unless specifically waived by the Department. Thereafter, tests shall be performed at least once every ninety (90) days in which there is a discharge.

Acute test failure (LC50) is defined as lethality to 50% or more of the test organisms exposed to 100% effluent for *Ceriodaphnia dubia*. 48 hour and fathead minnow 96 hour test. The 48 hour and 96 hour LC50 effluent value must be >100% to indicate a passing test. Any 48 hour or 96 hour LC50 effluent value of 100% or less will constitute a failure. Tests in which the control survival is less than 90% are invalid and must be repeated.

Table 2: Acute WET requirements for Outfall 001						
Effluent Dilution	0%(Control)	12.5%	25%	50%	75%	100%
Species and	<i>Ceriodaphnia dubia</i> - 48 Hour Acute - Static Renewal					
Test Type	Fathead Minnow - 96 Hour Acute - Static Renewal					
Endpoint	LC50					

If acute toxicity occurs in a routine test, an additional test shall be conducted within four weeks of the date of the initial sample. Should acute toxicity occur in the second test, testing shall be conducted at a frequency of once a month and the implementation of Part I.D ("Toxicity Reduction Evaluation (TRE)") shall be determined by the Department. Should there be no discharge during a specified sampling time frame; sampling shall be performed as soon as there is a discharge.

The permittee shall report the following results of each toxicity test on the quarterly DMR for that reporting period:

Pimephales promelas (Fathead Minnow)

- a. If the lowest Fathead minnow test value for % effluent is less than >100% in 100% effluent, enter a "1"; otherwise, enter a "0" for Parameter No. TGN6C.
- b. Report the lowest % effluent LC50 for Fathead minnow, Parameter No. TAB6C.

Ceriodaphnia dubia (Water Flea)

- a. If the lowest *Ceriodaphnia dubia* test value for % effluent is less than >100% in 100% effluent, enter a "1"; otherwise, enter a "0" for Parameter No. TGM3B
- b. Report the lowest % effluent LC50 for *Ceriodaphnia dubia*, Parameter No. TAA3B.

The static replacement toxicity tests shall be conducted in general accordance with the procedures set out in the latest revision of "Methods for Measuring the Acute Toxicity of Effluents to Freshwater and Marine Organisms," EPA-821-R-02-0012 (Fifth Ed., October 2002) and the "Region VIII EPA NPDES Acute Test Conditions-Static Renewal Whole Effluent Toxicity Tests." In the case of conflicts, the Region VIII document will prevail. The permittee shall conduct an acute 48-hour static toxicity test using freshwater fleas, *Ceriodaphnia dubia* and an acute 96-hour static replacement toxicity test using fathead minnows, *Pimephales promelas*.

2. Chronic Toxicity Testing

No chronic toxicity limits are imposed on this permit. Therefore, the permittee is not required to monitor or test for chronic toxicity.

The chronic toxicity tests shall be conducted in general accordance with the procedures set out in the latest revision of "Short Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms," EPA-600-4-91-002, and the "Region VIII EPA NPDES Chronic Test Conditions-Static Renewal Whole Effluent Toxicity Tests." In case of conflicts, the Region VIII document will prevail. Test species shall consist of freshwater fleas, *Ceriodaphnia dubia* and fathead minnow, *Pimephales promelas*.

3. Reduced Monitoring (Only Applies to Acute WET Testing)

If the results of a minimum of four consecutive samples taken over at least a 12 month period indicate no acute toxicity, the permittee may request the Department to allow a reduction to quarterly acute toxicity testing on only one species. The Department may approve or deny the request, based on the biomonitoring results and other available information. If the request is approved, the test procedures are to be the same as specified above for test species.

4. Reporting Requirements

Test results shall be submitted with the DMR for each reporting period. The format for the report shall be consistent with the latest revision of the "Region VIII Guidance for Whole Effluent Reporting" and shall include all chemical and physical data as specified for the tests.

D. Toxicity Reduction Evaluation (TRE)

If toxicity is detected, and it is determined by the Department that a TRE is necessary, the permittee shall be so notified and shall initiate a TRE immediately thereafter. The purpose of the TRE will be to establish the cause of the toxicity, locate the source(s) of the toxicity, and control or provide treatment for the toxicity.

If the TRE establishes that the toxicity cannot be eliminated by the current treatment system, the permittee shall submit a proposed compliance plan to the Department. The plan shall include the proposed approach to control toxicity and a proposed compliance schedule for achieving control. If the approach and schedule are acceptable to the Department, this permit may be reopened and modified.

If the TRE shows that the toxicity is caused by a toxicant(s) that may be controlled with specific numerical limitations or proper discharge management as approved by the Department, the permittee may:

1. Submit an alternative control program for compliance with the numerical requirements; or
2. If necessary, provide a modified biomonitoring protocol which compensates for the pollutant(s) being controlled numerically.

If acceptable to the Department, this permit may be reopened and modified to incorporate any additional numerical limitations, a modified compliance schedule if judged necessary by the Department, and/or a modified biomonitoring protocol.

Failure to conduct an adequate TRE, or failure to submit a plan or program as described above, or the submittal of a plan or program judged inadequate by the Department, shall in no way relieve the permittee from maintaining compliance with the whole effluent toxicity requirements of this permit.

II. SPECIAL CONDITIONS

A. Process Control Monitoring

The purpose of this monitoring is to regulate and/or adjust the discharge rate to ensure that the desire to manage Devils Lake levels is balanced by the protection of water quality and the beneficial uses of the Sheyenne and Red Rivers. Monitoring will also be used to refine the HEC-5Q Model and to interpret significant changes in biological and physical characteristics.

The Department may consider requests for less frequent monitoring. Less frequent monitoring may be granted when the accumulated test data for the parameter is consistent and at a level which would not result in a violation of an established water quality standard. A reduction in monitoring frequency for a parameter may also be considered if a satisfactory relationship between the parameter and an alternate test can be demonstrated.

1. Devils Lake Outlet

The sampling location will be at the canal terminal structure.

Table 3: Devils Lake Outlet Monitoring Requirements	
Parameters	Sampling Frequency
Temperature	Continuous
Specific Conductance	Continuous
pH	1/day
TDS & Major Ions ^a	1/week
Ammonia	2/month ^b
Nitrate/Nitrite	2/month ^b
Total Kjeldahl Nitrogen	2/month ^b
Total Phosphorus	2/month ^b
Dissolved Phosphorus	2/month ^b
Suspended Solids	2/month ^b
Trace Metals ^a	1/month
a. Refer to Part II. Table 6. Water Chemistry Groupings	
b. Take a grab sample every other week.	

2. Sheyenne River Upstream of the Devils Lake Discharge (Flora)
The upstream compliance monitoring shall be conducted at a point upstream of the outlet which is representative of river water quality prior to mixing with the effluent from the outlet system. Refer to table 3 for required parameters and sampling frequency.
3. Sheyenne River Downstream of Discharge (Bremen)
The downstream compliance monitoring shall be conducted at a point downstream of the outlet which is representative of river water quality after mixing with the effluent from the outlet system. Refer to table 3 for required parameters and sampling frequency.
4. Sheyenne River Near Cooperstown, ND

Table 4: Sheyenne River Monitoring Requirements	
Parameters	Sampling Frequency
Stream Flow	Continuous
Specific Conductance	Continuous
TDS & Major Ions ^a	1/week
Ammonia	2/month ^b
Nitrate/Nitrite	2/month ^b
Total Kjeldahl Nitrogen	2/month ^b
Total Phosphorus	2/month ^b
Dissolved Phosphorus	2/month ^b
Suspended Solids	2/month ^b
Trace Metals ^a	1/month
a. Refer to Part II. Table 6. Water Chemistry Groupings	
b. Take a grab sample every other week.	

5. Sheyenne River Near Valley City, ND
Refer to table 4 for required parameters and sampling frequency.

6. Sheyenne River Above Diversion Near Horace, ND
Refer to table 4 for required parameters and sampling frequency.
7. Red River of the North above the Confluence of the Sheyenne River Near Harwood, ND

Table 5: Red River of the North Monitoring Requirements	
Parameters	Sampling Frequency
Flow	Continuous
Specific Conductance	Continuous
TDS & Major Ions ^a	1/week
a. Refer to Part II. Table 6. Water Chemistry Groupings	

8. Red River of the North at Halstad, MN
Refer to table 5 for required parameters and sampling frequency.
9. Red River of the North at Pembina, ND
Refer to table 5 for required parameters and sampling frequency.
10. The ecological condition of the Sheyenne River will be determined through a biological assessment of the river within four stream reaches. One assessment reach should be located upstream from the outlet, one downstream of the outlet (approximately 1 mile), one just upstream from Lake Ashtabula, and one near the river's confluence with the Red River of the North. Three sites will be sampled within each reach as a measure of spatial variability. The site located upstream of the outlet will be sampled the same time the downstream reaches are sampled to provide a measure of temporal variability. The biological assessment will consist of three biological assemblages (macroinvertebrates, fish, and periphyton) and a physical habitat assessment. At the same time these samples are collected, a grab water sample will be collected for chemical analysis. Field procedures should follow those used by the U.S. Environmental Protection Agency's Environmental Monitoring and Assessment Program for the Western States (EMAP Western Pilot).

An initial assessment was completed by the permit holder prior to the operation of the outlet. Subsequent assessments will be completed on a periodic basis deemed appropriate by the Department.

11. Adaptive Management Plan (AMP). The criteria for establishing and implementing the adaptive management plan as developed should ensure compliance with permit requirements and maintenance of beneficial uses of the water resources downstream. The plan should outline the basic procedures for evaluating monitoring data, responding to observed impacts to downstream water resources, and adjusting the operation discharge as needed.

The adaptive management plan has been submitted and approved by the Department.

B. Water Chemistry Groupings

Table 6: Water Chemistry Groupings		
TDS and Major Ions consist of the following parameters:		
Bicarbonate	Calcium	Carbonate
Chloride	Conductivity	Fluoride
Iron	Magnesium	Manganese
Nitrate	Percent sodium	pH
Potassium	Sodium	Sodium absorption ratio

Table 6: Water Chemistry Groupings		
TDS and Major Ions consist of the following parameters:		
Sulfate	Total alkalinity	Total dissolved solids
Total hardness	Turbidity	
Trace Metals consist of the following parameters:		
Aluminum	Antimony	Arsenic
Barium	Beryllium	Boron
Cadmium	Chromium	Copper
Lead	Nickel	Selenium
Silver	Thallium	Zinc

III. MONITORING, RECORDING, AND REPORTING REQUIREMENTS BP 2008.02.25

A. Representative Sampling (Routine and Non-Routine Discharges)

All samples and measurements taken shall be representative of the monitored discharge.

In order to ensure that the effluent limits set forth in this permit are not violated at times other than when routine samples are taken, the permittee must collect additional samples at the appropriate outfall whenever any discharge occurs that may reasonably be expected to cause or contribute to a violation that is unlikely to be detected by a routine sample. The permittee must analyze the additional samples for those parameters limited in Part I.B ("Effluent Limitations and Monitoring") of this permit that are likely to be affected by the discharge.

The permittee must collect such additional samples as soon as the spill, discharge, or bypassed effluent reaches the outfall. The samples must be analyzed in accordance with paragraph Part III.B ("Test Procedures"). The permittee must report all additional monitoring in accordance with paragraph Part III.D ("Additional Monitoring").

B. Test Procedures

The collection and transportation of all samples shall conform with EPA preservation techniques and holding times. All laboratory tests shall be performed by a North Dakota certified laboratory in conformance with test procedures pursuant to 40 CFR 136, unless other test procedures have been specified in this permit or approved by EPA as an alternate test procedure under 40 CFR 136.5. The method of determining the total amount of water discharged shall provide results within 10 percent of the actual amount.

C. Recording of Results

Records of monitoring information shall include:

1. the date, exact place and time of sampling or measurements;
2. the name(s) of the individual(s) who performed the sampling or measurements;
3. the name of the laboratory;
4. the date(s) and time(s) analyses were performed;
5. the name(s) of the individual(s) who performed the analyses;
6. the analytical techniques or methods used; and
7. the results of such analyses.

Additional Monitoring

If the discharge is monitored more frequently than this permit requires, all additional results, if in compliance with Part III.B ("Test Procedures"), above, shall be included in the summary on the DMR.

D. Reporting of Monitoring Results

Monitoring results shall be summarized and reported on DMR forms. If no discharge occurs during a reporting period, "No Discharge" shall be reported. All reports must be postmarked by the last day of the month following the end of each reporting period. Duplicate signed copies of these, and all other reports required herein, shall be submitted to the Department at the following address:

ND Department of Health
Division of Water Quality
918 East Divide Ave
Bismarck ND 58501-1947

E. Records Retention

All records and information (including calibration and maintenance) required by this permit shall be kept for at least three years or longer if requested by the Department or EPA.

IV. COMPLIANCE RESPONSIBILITIES BP 2008.02.25

A. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

B. Proper Operation and Maintenance

The permittee shall at all times maintain in good working order and operate as efficiently as possible all treatment or control facilities or systems installed or used by the permittee to achieve compliance with the terms and conditions of this permit. If necessary to achieve compliance with the conditions of this permit, this shall include the operation and maintenance of backup or auxiliary systems.

C. Planned Changes

The Department shall be given advance notice of any planned changes at the permitted facility or of an activity which may result in permit noncompliance. Any anticipated facility expansions, production increase, or process modifications which might result in new, different, or increased discharges of pollutants shall be reported to the Department as soon as possible. Changes which may result in a facility being designated a "new source" as determined in 40 CFR 122.29(b) shall also be reported.

D. Duty to Provide Information

The permittee shall furnish to the Department, within a reasonable time, any information which the Department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Department, upon request, copies of records required to be kept by this permit. When a permittee becomes aware that it failed to submit any relevant facts or submitted incorrect information in a permit application or any report, it shall promptly submit such facts or information.

E. Signatory Requirements

All applications, reports, or information submitted to the Department shall be signed and certified.

1. All permit applications shall be signed by a responsible corporate officer, a general partner, or a principal executive officer or ranking elected official.

2. All reports required by the permit and other information requested by the Department shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:
 - a. The authorization is made in writing by a person described above and submitted to the Department; and
 - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility, such as the position of plant manager, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters.

If an authorization under Part IV.E.2 ("Signatory Requirements") is no longer accurate for any reason, a new authorization satisfying the above requirements must be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.

Any person signing a document under this section shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted herein. Based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment."

F. Noncompliance Notification

The permittee shall report any noncompliance which may seriously endanger health or the environment as soon as possible, but no later than twenty-four (24) hours from the time the permittee first became aware of the circumstances. The report shall be made to the EPA, Region VIII, Emergency Response Branch at 1.800.424.8802 and the State of North Dakota, Division of Homeland Security at 1.800.472.2121. The following occurrences of noncompliance shall be reported by telephone to the Department at 701.328.5210 by the first workday (8:00 a.m.-5:00 p.m. Central time) following the day the permittee became aware of the circumstances:

1. Any lagoon cell overflow or any unanticipated bypass which exceeds any effluent limitation in the permit (see Part IV.H, "Bypass of Treatment Facilities");
2. Any upset which exceeds any effluent limitation in the permit (see Part IV.I, "Upset Conditions"); or
3. Violation of any daily maximum effluent or instantaneous discharge limitation for any of the pollutants listed in the permit.

A written submission shall also be provided within five days of the time that the permittee became aware of the circumstances. The written submission shall contain:

1. A description of the noncompliance and its cause;
2. The period of noncompliance, including exact dates and times;
3. The estimated time noncompliance is expected to continue if it has not been corrected; and
4. Steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

Reports shall be submitted to the address in Part III.E, ("Reporting of Monitoring Results"). The Department may waive the written report on a case by case basis if the oral report has been received within 24 hours by the Department at 701.328.5210 as identified above.

All other instances of noncompliance shall be reported no later than at the time of the next DMR submittal. The report shall include the four items listed in this subsection.

G. Bypass of Treatment Facilities

Any bypass of facilities which does not cause effluent limitations to be exceeded may be made only if it is for essential maintenance to assure efficient operation.

Any bypass of facilities which results in noncompliance is prohibited except where unavoidable to prevent loss of life, personal injury, or severe property damage and no feasible alternatives to the bypass exist. The permittee shall provide notification of unanticipated bypasses as required by Part IV.F, ("Noncompliance Notification"). If, for other reasons, a bypass is considered necessary, a request to bypass shall be submitted, at least 10 days in advance if possible, to the Department. No bypass of this type shall occur until permission has been obtained from the Department.

H. Upset Conditions

An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of the following paragraph are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

1. An upset occurred and the permittee can identify its cause(s);
2. The permitted facility was, at the time being, properly operated;
3. The permittee submitted notice of the upset as required under Part IV.F, ("Noncompliance Notification"); and
4. The permittee complied with any remedial measures required under Part IV.I, ("Duty to Mitigate").

In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

I. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment. The permittee, at the Department's request, shall provide accelerated or additional monitoring as necessary to determine the nature and impact of any discharge.

J. Removed Materials

Collected screenings, grit, solids, sludges, or other pollutants removed in the course of treatment shall be buried or disposed of in such a manner to prevent any pollutant from entering any waters of the state or creating a health hazard. Sludge/digester supernatant and filter backwash shall not be directly blended with or enter either the final plant discharge and/or waters of the state. The permit issuing authority shall be contacted prior to the disposal of any sewage sludges. At that time, concentration limitations and/or self-monitoring requirements may be established.

K. Duty to Reapply

Any request to have this permit renewed should be made six months prior to its expiration date.

V. GENERAL PROVISIONS BP 2008.02.25

A. Inspection and Entry

The permittee shall allow Department and EPA representatives, at reasonable times and upon the presentation of credentials if requested, to enter the permittee's premises to inspect the wastewater treatment facilities and monitoring equipment, to sample any discharges, and to have access to and copy any records required to be kept by this permit.

B. Availability of Reports

Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Department and EPA. As required by the Act, permit applications, permits, and effluent data shall not be considered confidential.

C. Transfers

This permit is not transferable except upon the filing of a Statement of Acceptance by the new party and subsequent Department approval. The current permit holder should inform the new controller, operator, or owner of the existence of this permit and also notify the Department of the possible change.

D. New Limitations or Prohibitions

The permittee shall comply with any effluent standards or prohibitions established under Section 306(a), Section 307(a), or Section 405 of the Act for any pollutant (toxic or conventional) present in the discharge or removed substances within the time identified in the regulations even if the permit has not yet been modified to incorporate the requirements.

E. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. This includes the establishment of limitations or prohibitions based on changes to Water Quality Standards, the development and approval of waste load allocation plans, the development or revision to water quality management plans, changes in sewage sludge practices, or the establishment of prohibitions or more stringent limitations for toxic or conventional pollutants and/or sewage sludges. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

F. Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

G. State Laws

Nothing in this permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation preserved under Section 510 of the Act.

H. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Act.

I. Property Rights

The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.

J. Severability

The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected thereby.